Irrigation Districts—Assessments—Reclamation Projects.

Lands of a federal reclamation project are subject to assessments when in an irrigation district.

Mark H. Derr, Esq., December, 17, 1926.
County Attorney,
Polson, Montana.

My dear Mr. Derr:

You have requested my opinion whether lands in a government reclamation project are subject to irrigation district assessments when they have been included in irrigation districts created under the laws of this state.

Section 7166, R. C. M. 1921, as amended by chapter 112, laws of 1925, contains the following provision:

> "Irrigation districts may be formed in order to cooperate with the United States under the federal reclamation laws heretofore or hereafter enacted, or under any act of congress which shall permit of the performance by the United States of work in this state, for the purposes of construction of irrigation works, including drainage works, or for purchase, extension, operation, or maintenance of constructed works, or for the assumption, as principal or guarantor, of indebtedness to the United States on account of district lands. When so organized, such district shall have the powers conferred or that may hereafter be conferred, by law upon such irrigation district, provided, however, that all irrigation districts organized in connection with United States Reclamation Projects a majority of the holders of title or evidence of title to lands sought to be included in such irrigation district under the provisions of the act, may propose the establishment and organization of such district."

Section 7234, R. C. M. 1921, as amended by chapter 136, laws of 1925, contains the following provisions:

> "* * * and provided further, that where contract shall have been made with the United States, the lands within the district, shall pay in accordance with the federal reclamation laws and the public notices, orders, and regulations issued thereunder, and in compliance with any contracts made by the United States with the owners of said lands; and in compliance further, with the contract between the districts and the United States; and provided further, that where the works necessary for the completed project shall be constructed progressively, over a period of years, and that where a portion of the lands within the district are or can be irrigated one year or more before the completion of the entire project, then and in

that case, such lands, so irrigated or that can be so irrigated through the built portion of the project, shall pay for the cost of operating that portion of the project; and in case of lands having appurtenant thereto a partial water right or partial rights in a system of irrigation other than that of the districts, the amounts payable shall be equitably apportioned."

The evident purpose of these statutory provisions is to facilitate the collection of the costs of constructing the irrigation works. They were undoubtedly passed for the purpose of authorizing the creation of an irrigation district with which the secretary of the interior is authorized by the act of May 15, 1922 to enter into contracts whereby the irrigation district may agree to pay the moneys required to be paid to the United States under the reclamation acts. (Fed. St. Ann. 1922 Supp. p. 345). This act apparently was designed to change the rule announced by the supreme court of the United States in the case of Irwin vs. Wright, 66 L. Ed. 573 with respect to the taxability of such lands for irrigation purposes. This act contains the following:

"Sec. 2. (Patents and Water-right Certificates—Liens for payment of Charges.) That patents and water-right certificates which shall hereafter be issued under the terms of the Act entitled "An Act providing for patents on reclamation entries and for other purposes," approved August 9, 1912 (Thirty-seventh Statutes at Large, page 265), for lands lying within any irrigation district with which the United States shall have contracted, by which the irrigation district agrees to make the payment of all charges for the building of irrigation works and for operation and maintenance, shall not reserve to the United States a lien for the payment of such charges; and where such a lien shall have been reserved in any patent or water-right certificate issued under the said Act of Congress, the Secretary of the Interior is hereby empowered to release such lien in such manner and form as may be deemed effective; and the Secretary of the Interior is further empowered to release liens in favor of the United States contained in water-right applications and to assent to the release of liens to secure reimbursement of moneys due to the United States pursuant to water-right applications running in favor of the water users' association and contained in stock subscription contracts to such associations **when the lands covered by such liens shall be subject to assessment and levy for the collection of all moneys due and to become due to the United States by irrigation districts formed pursuant to state law and with which the United States shall have entered into contract therefor**; Provided, That no such lien so reserved to the United States in any patent or water-right certificate shall be released until the owner of the land covered by the lien shall consent in writing to the assessment, levy and collection by such irrigation district of taxes against said land for the payment to the United States of the contract obligation: Provided further, That before any lien is

> released under this Act the Secretary of the Interior shall file a written report finding that the contracting irrigation district is legally organized under the laws of the State in which its lands are located, with full power to enter into the contract and to collect by assessment and levy against the lands of the district the amount of the contract obligation." (42 Stat. L. 542).

It seems to me clear that by the italicized portion of the federal statute above congress intended such lands to be liable for irrigation district assessments in like manner as other lands, providing the state statutes were sufficiently broad to make them liable therefor. That chapter 136 of the laws of 1925 is sufficiently broad there can be no doubt.

It is therefore my opinion that lands in a reclamation project are subject to irrigation district assessments by irrigation districts contracting with the Secretary of the Interior for the payment of moneys due to the United States, save and except that where patents or water-right certificates were issued before the passage of the federal statute (42 St. L. 542) and before the creation of the irrigation district under the state law, and hence, whereby the federal government reserved a lien, then as to such lands they are not liable for irrigation district assessments, unless the owner of the land covered by the lien consents in writing to such assessment.

Very truly yours,

L. A. FOOT,
Attorney General.